

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

CARL DaCOSTA,

Plaintiff,

vs.

**3:19-CV-913
(TJM/ML)**

**WILMINGTON TRUST, N.A., not in its
Individual Capacity but Solely as Trustee to
Lenham XS Trust mortgage Pass-through
certificates, Series 2006-5, DIANA SEARCH,
Esq., MAUREEN A. BYRNE, Esq., and
McCALLA RAYMER LEIBERT PIERCE, LLC,**

Defendants.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

The Court referred this *pro se* civil action, brought pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq., and state law, to Magistrate Judge Miroslav Lovric for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). In brief, Plaintiff alleges that the Defendants fraudulently executed a mortgage with him and fraudulently obtained a judgment of foreclosure in state court.

Magistrate Judge Lovric's Report-Recommendation, dkt. # 6, issued on August 29, 2019, provided Plaintiff's Complaint, filed *pro se* along with a motion to proceed *in forma pauperis*, an initial review pursuant to 28 U.S.C. §§ 1915(e) and 1915A. Magistrate Judge Lovric recommends that the Court permit filing and service of the Complaint to the extent

that the Plaintiff raises fraud claims seeking monetary damages related to how Defendants obtained foreclosure on the property in question. Magistrate Judge Lovric also recommends that the Court find a lack of subject-matter jurisdiction to the extent that Plaintiff seeks a stay of the state-court foreclosure judgment, a return of title to the property, or alleges that Defendants lacked standing to seek foreclosure in state court. He also recommends dismissal of Defendant's breach-of-contract claim. Magistrate Judge Lovric finds that the Rooker-Feldman doctrine bars such claims and deprives the Court of subject-matter jurisdiction over them.

Plaintiff did not object to the Report-Recommendation, and the time for such objections has passed. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice and the Court will accept and adopt the Report-Recommendation for the reasons stated therein.

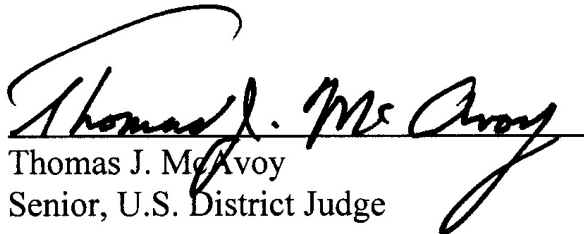
Accordingly,

The Report-Recommendation of Magistrate Judge Lovric, dkt. # 6, is hereby **ACCEPTED** and **ADOPTED**, as follows:

1. Plaintiff's Complaint is accepted for filing and service to the extent that Courts One, Two, Three, Five, and Six seek monetary damages for Defendants' alleged fraud in obtaining foreclosure on the mortgaged premises described in the Complaint;
2. Those Counts are dismissed without prejudice for lack of subject-matter jurisdiction to the extent that they seek relief other than monetary damages or argue that Defendants lacked standing in the state-court proceeding;

3. Count Four is dismissed in its entirety without prejudice; and
4. Should plaintiff choose to file an Amended Complaint, that Amended Complaint should be consistent with Magistrate Judge Lovric's recommendations and filed within 30 days of the date of this order. Plaintiff is advised that an amended complaint **supersedes in all respects** the prior pleading. Therefore, if plaintiff files an amended complaint, he **must properly allege in the amended complaint all factual bases for all claims asserted therein, and the amended complaint must be in compliance with Rules 8 and 10 of the Federal Rules of Civil Procedure**

IT IS SO ORDERED.


Thomas J. McAvoy
Senior, U.S. District Judge

Dated: November 12, 2019